

REMARKS-General

1. The newly drafted independent claim 39 incorporates all structural limitations of the original claim 1 and includes further limitations previously brought forth in the disclosure. No new matter has been included. All new claims 39-48 are submitted to be of sufficient clarity and detail to enable a person of average skill in the art to make and use the instant invention, so as to be pursuant to 35 USC 112.

2. With regard to the rejection of record based on prior art, Applicant will advance arguments to illustrate the manner in which the invention defined by the newly introduced claims is patentably distinguishable from the prior art of record. Reconsideration of the present application is requested.

Response to Rejection of Claims 21, 23, 25, 27, 29, 31, 33 and 37 under 35USC112

3. The applicant submits that the newly drafted claims 39-48 particularly point out and distinctly claim the subject matter of the instant invention, as pursuant to 35USC112.

4. The examiner is of the view that it is not clear how the user can use the switch without accessing the device through the access opening. The applicant respectfully submits that this can be done by directly pressing or actuating the control switch from an exterior of the receiving pocket (i.e. the user directly presses the fabric constituting the receiving pocket) without actually opening the receiving pocket and physically accessing the interior of the receiving pocket through the access opening. As such, the user needs not open the receiving pocket every time he or she switches on or off the massaging device.

Response to Rejection of Claims 21, 23, 25, 27, 29, 31, 33 and 37 under 35USC103

5. The Examiner rejected claims 21, 23, 25, 27, 29, 31, 33 and 37 under 35USC103(a) as being unpatentable over Lunn (US 3,878,838) in view of Sears (US 4,846,157). Pursuant to 35 U.S.C. 103:

“(a) A patent may not be obtained though the invention is **not identically** disclosed or described as set forth in **section 102 of this title**, if the **differences** between the subject matter sought to be patented and the prior art are such that the

subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made."

6. In view of 35 U.S.C. 103(a), it is apparent that to be qualified as a prior art under 35USC103(a), the prior art must be cited under 35USC102(a)-(g) but the disclosure of the prior art and the invention are not identical and there are one or more differences between the subject matter sought to be patented and the prior art. In addition, such differences between the subject matter sought to be patented **as a whole** and the prior art are obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

7. In other words, the differences between the subject matter sought to be patent as a whole of the instant invention and Lunn which is qualified as prior art of the instant invention under 35USC102(b) are obvious in view of Sears at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

8. The applicant respectfully submits that the differences between the instant invention and Lunn are not obvious under 35USC103(a) and in view of Sears, due to the following reasons:

(A) Regarding the newly drafted claim 39, the examiner is of the view that it would have been obvious for one having ordinary skill in the art to modify the pocket to more completely dispose the message device on the massager body to more completely support the message device on the massager body. The applicant respectfully disagrees. In Lunn, it is disclosed that vibrator (12) is **held** (as opposed to "disposed") by the compartment (14) having an elongated cylindrical shape, wherein two ends portions of the vibrator (12) is protruded **out** of the compartment (14) for a user to switch on or switch off the vibrator (12) for starting and stopping the massaging process (Lunn, Col. 2, Lines 6-13 and Lines 35-42). In other words, the user has **direct access** to the vibrator (12) at two ends portions thereof. Thus, the vibrator (12) is not fully and securely protected by the compartment (14). In the instant invention, however, the massaging device is **completely** disposed within the receiving pocket wherein when the user wishes to operate the massaging device, he or she needs not access the receiving

pocket for switching on or off the massaging device. Thus, the massaging device is better protected by the massager body of the instant invention. This is an unexpected result and advantage. The applicant respectfully submits that this difference is crucial from the point of view of product protection from what may be an adverse driving environment. For example, when the car in which the seat belt massager is provided is being driven in a bumpy landscape, the seat belt massager may easily hit other object in the car so as to be accidentally damaged.

(B) It seems from the disclosure in Lunn that when the vibrator (12) is turned on, vibration is transmitted from the vibrator (12) to the user through a plurality of **physical layers**, such as the compartment (14), the strap (16), the seat belt (18), and the rigid planer shaped stay (32) (Lunn, Fig. 1 and Fig. 2). This can also be suggested by the structural limitation disclosed in Lunn that the stay (32) is secured in the **inner portion** (24) of the strap (16) in Fig. 1 of Lunn's patent. In the instant invention, the vibration is transmitted from the massaging device to the user through the treatment surface and the seat belt (i.e. one layer of physical materials apart from the seat belt). The examiner contends that this limitation means 'applicant's invention has to go through a plurality of physical layers as well'. The applicant respectfully submits that addition of even one more layer between the vibrator and the user's body is **significant** enough to **substantially reduce** the effectiveness or performance of the seat belt massager.

(C) The examiner also contends that even if Lunn is somehow different from the instant invention, it is not clear how the claims define this difference over Lunn. This is not true. This particular structural limitation and difference between the instant invention as recited in the newly drafted independent claim 39 and Lunn is **inherent** in nature. According to the drawings the descriptions in Lunn, there are substantial structural differences between the instant invention and Lunn.

(D) Referring to the newly drafted claim 40, with regard to Fig. 1 to Fig. 4 of Lunn patent, the applicant respectfully submits that the seat belt assembly and the vibrator disclosed in Lunn are difficult and inconvenient to detach from the seat belt itself. For this point, it is important to emphasize that the seat belt massager is meant to be used in a car. That means the attachment and detachment thereof must be very convenient and prompt. The hoop and loop fastener provides a universal and easy

means of attachment and detachment of the massager body onto or from the seat belt, in that everyone, including children, would have the necessary skill to operate the hoop and loop fasteners.

(E) "The mere fact that a reference could be modified to produce the patented invention would not make the modification obvious unless it is suggested by the prior art." Libbey-Owens-Ford v. BOC Group, 4 USPQ 2d 1097, 1103 (DCNJ 1987). While it is permissible to modify a reference's disclosure in the examination of patent applications, such modifications are not allowed if they are prompted by an applicant's disclosure, rather than by a reasoned analysis of the prior art and by suggestions provided therein. In re Leslie, 192 USPQ 427 (CCPA 1977). The applicant respectfully submits that Lunn does not disclose the features recited in the newly drafted independent claim 39. In hindsight, the Examiner may feel that it would be obvious to modify Lunn to produce the instant invention. Such hindsight reconstruction is not a permissible method of constructing a rejection under 35 U.S.C. 103. In re Warner and Warner, 154 USPQ 173, 178 (CCPA 1967).

(F) "To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited art references for combination in the manner claimed... [T]he suggestion to combine requirement stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness..." In re Gorman, 933 F.2d 982, 986, 18 USPQ 2d 1885, 1888 (Fed. Cir. 1991). In the instant invention, the teaching in Lunn does not motivate, suggest or teach a person having ordinary skill in the art to modify Lunn to produce the instant invention claimed in the newly drafted independent claim 39.

(G) The Office Action fails to provide a reasoned analysis on why one of ordinary skilled in the art would have modified embodiments in the detailed description of the preferred embodiment of the Lunn to produce the instant invention as recited in the newly drafted independent claim 39.

The Cited but Non-Applied References

9. The cited but not relied upon references have been studied and are greatly appreciated, but are deemed to be less relevant than the relied upon references.

10. In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of the rejection are requested. Allowance of claims 39-48 at an early date is solicited.

11. Should the examiner believe that anything further is needed in order to place the application in condition for allowance, he is requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,



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CERTIFICATE OF MAILING

I hereby certify that this corresponding is being deposited with the United States Postal Service by First Class Mail, with sufficient postage, in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on the date below.

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Person Signing: Raymond Y. Chan